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By: Thomas J. Hagner, Esquire

LUCIANA BAKER

Plaintiff,

Vs.

THE HARTFORD LIFE INSURANCE COMPANY, and BLOOMBERG, LP – NEW YORK, ADMINISTRATOR OF THE BLOOMBERG LP LONG-TERM DISABILITY PLAN

Defendant,

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

CIVIL ACTION NO.

COMPLAINT

Plaintiff, Luciana Baker, by way of Complaint against Defendant, says:

1. This is an action to redress the wrongful denial of long term disability benefits rightfully due to the Plaintiff pursuant to a certain group insurance policy issued by The Hartford Insurance Company ("Hartford"), of which she is a beneficiary.

JURISDICTION AND VENUE

2. This action is brought pursuant to Sections 502(a)(1)(B), (a)(1)(3), (c), and (g)(1), of ERISA, 29 U.S.C. §1132(a)(1)(B) and (g)(1). This Court has subject matter jurisdiction pursuant to 28 U.S.C. §1331 and §502(e)(1) of ERISA, 29 U.S.C. §1132 (e)(1). Pursuant to §502(f) of ERISA, 29 U.S.C. §1132(f), this Court has jurisdiction without respect to the amount in controversy or the citizenship of the parties.

3. Venue is proper in this District pursuant to 28 U.S.C. §1391(c) in that there were sufficient contacts in this District by Defendant including the marketing, selling and issuance of the subject policy of insurance as well as frequent contacts with the Plaintiff herein.

PARTIES

4. Luciana Baker is an individual residing at 305 Marten Road, Princeton, New Jersey 08540.

5. Defendant, The Hartford Life Insurance Company has a principal place of business located in Maitland, Florida.

6. Plaintiff is a participant in a Group Long Term Disability Insurance Policy issued by The Hartford Life Insurance Company to Plaintiff's employer, Bloomberg, LP, Group Policy No. 83171440.

7. The Plan at all times pertinent hereto was maintained and sponsored by Bloomberg, LP - New York, 731 Lexington Avenue, 7th Floor, New York, New York 10022.

8. The Plan at all times pertinent hereto was underwritten by The Hartford Life Insurance Company ("Hartford").

FACTUAL BACKGROUND

9. For purposes of coverage under the Plan, during the time period pertinent hereto, the Plaintiff is considered disabled if, during the Elimination Period and the following 24 months, Injury or Sickness causes physical or mental impairment to such a degree of severity that she is (1) continuously unable to perform the Material and Substantial Duties of Your Regular Occupation; and (2) not Gainfully Employed.

10. The Plan defines “material and substantial duties” as those duties which are described as the necessary functions of Your Regular Occupation which cannot be reasonably omitted or altered.

11. The Plan defines “Regular Occupation” as the occupation that You are performing for income or wages on Your Date of Disability.

12. As of 2007 Plaintiff was employed as a news producer/editor for Bloomberg News.

13. While employed by Bloomberg News as a news producer/editor, the Plaintiff held a primarily desk base position and her work consisted of writing and editing financial reports.

14. Plaintiff's assignments required prolonged sitting for hours without intermission during, for example, long telephone conferences, or financial market events that Plaintiff was required to write and/or for live transmission to customers worldwide to be watched on their Bloomberg terminals.

15. On February 5, 2007 Plaintiff became unable to continuously perform the material and substantial duties of her regular occupation due to severe lower back pain including the complications of spinal surgery performed in April, 2001.

16. Plaintiff's symptoms included chronic severe low back pain, vascular insufficiency of the arteries in both legs, as well as a neurogenic bladder.

18. As of February 12, 2007 on the recommendation of her physicians, the Plaintiff ceased working and applied for long-term disability benefits.

19. Plaintiff became eligible for long-term disability benefits in August, 2007 after the expiration of a 180 day elimination period.

20. Plaintiff submitted a claim for long-term disability benefits dated August 22, 2007 ("initial claim").

21. In the initial claim the Plaintiff explained that she was not able to sit for any appreciable period of time and that after approximately 20 minutes her lower extremities became numb, tingling and cold.

22. In her initial claim Plaintiff explained that she minimized sitting while away from work and that her symptoms improved significantly.

23. In support of her initial claim, Plaintiff's employer, Bloomberg, submitted a "Physical Demands Analysis" form which indicated that Plaintiff's job required to her sit 7 hours per day using a computer, telephone and headset.

24. Also in support of her initial claim Plaintiff submitted a report from Dr. Cook dated July 12, 2007 which stated, in pertinent part, the following:

> "With the perspective of having treated her throughout those years with that pain as well as seeing her now, much more functional and relatively pain free, I therefore feel that it is not medically advisable for her to return to work in her previous position, which does require prolonged sitting. If there is no other employment option that would not require that degree of sitting, then she should proceed with looking into long-term disability."

25. Hartford issued a letter to Dr. Cook dated August 7, 2007 acknowledging that "you recommended that she not return to her previous position which requires prolonged sitting, and if there is not other employment options that would reduce the degree of sitting, you recommended proceeding with long-term disability."

26. In support of the long-term disability claim, the Plaintiff submitted a report dated August 28, 2007 by a treating physician, Paul M. Cook, M.D., which stated unequivocally that the treatment plan included the minimization of sitting duration.

27. In spite of the foregoing, Hartford issued a letter dated September 14, 2007 denying Plaintiff's claim for long-term disability benefits stating, in pertinent part, that Hartford "concluded from the combination of all the medical information in your file that you are able to perform the Essential Duties of Your Occupation which falls in the sedentary category of work."

28. The Plaintiff filed an appeal of the initial denial of her claim for long-term disability benefits in January, 2008.

29. In support of her appeal, the Plaintiff submitted a letter by another treating physician, Dr. Hsueh dated October 21, 2007 describing the treatment rendered to the Plaintiff since August, 2002 and also containing the unequivocal statement that the Plaintiff was "unable to perform any type of sedentary work as the sitting for standing for prolonged periods of time exacerbate her medical problems."

30. The report of Dr. Hsueh of October 21, 2007 recommended that the Plaintiff "go on long-term disability."

31. In further support of her appeal the Plaintiff submitted a report from Dr. Keyan Ma, M.D. dated September 25, 2007 referencing a February 7, 2007 MRI of the lumbar spine showing mild degenerative bulging discs at L4-5 and L5-S1 with small annular fishers; mild bilateral L4-5 subarticular recess stenosis; as well as L2-3 through L5-S1 facet arthrosis.

32. The report of Dr. Ma of September 25, 2007 also referenced an MRI of February 16, 2007 showing bilateral L4-L5-S1 radiculopathy.

33. The report of Dr. Ma of September 25, 2007 included the following recommendation: "Patient is a journalist who has to stay sedentarily during the work. She is unable to perform the work duty under her medical conditions. She is strongly recommended for long-term disability."

34. In further support of her appeal Plaintiff submitted a medical report from Princeton and Rutgers Neurology PA referencing her examination concerning her neurogenic bladder.

35. In further support of her appeal Plaintiff submitted a report from Dr. Nataliya Deshevsky, M.D. dated October 9, 2007 stating that the Plaintiff was suffering from the complications of spinal surgery performed in 2001 which included a neurogenic bladder characterized by frequent bounce of urinary retention and urinary tract infections. The report of Dr. Deshevsky dated October 9, 2007 stated that the urinary symptoms were exacerbated by sitting for long periods of time.

36. The report of Dr. Deshevsky of October 9, 2007 further stated that the Plaintiff had a history of vascular insufficiency of the arteries in both legs which symptoms were also neurogenic and also due to prolonged sitting.

37. In further support of her appeal the Plaintiff submitted a photograph of her work station as well as a description of her job duties and the reasons why she was unable to perform the job.

38. In the above referenced description Plaintiff explained that only after 10-15 minutes of sitting she needed to find a way to raise her legs but that the job station did not allow for that accommodation.

39. In her appeal Plaintiff explained that there were numerous programs on her personal computer that the Plaintiff needed to utilize on a regular basis during the day in order to write and edit financial reports.

40. In the job description which she submitted, the Plaintiff explained that on a regular basis she needed to utilize the Bloomberg terminal with four essential screens; multiple telephones; broadcasting equipment needed to monitor the audio transmission of live events, conference calls, press releases and the like; a television needed to cue the beginning and ending of events and interviews.

41. In her job description, the Plaintiff further explained that when she experienced back spasms she could urinate normally and that even though she attempted to work by alternating between sitting, standing and kneeling, her health problems became aggravated significantly.

42. In her job description the Plaintiff also explained that the vascular problem in her lower extremities also became aggravated due to the prolonged sitting which her job required.

43. Even though the Policy itself defines disability as the inability to perform the "material and substantial duties of your regular occupation", Hartford denied Plaintiff's claim by concluding that she was unable to perform the "essential duties" of her occupation.

44. The January, 2008 appeal included an Attending Physician's Statement of Dr. Cook dated August 28, 2007; medical consultation notes of Dr. Gary A. Fantini of the Cornell University College of Medicine dated February 21, 2006 and September 21, 2007; a medical report of Dr. Keyan Ma dated September 25, 2007; a medical report of Dr. Busono dated September 28, 2007; a medical report of Dr. Natalia Deshevesky dated October 9, 2007; a medical report of Dr. Marc I. Schwartsman dated October 16, 2007; and a medical report of Dr. Wang Chung Hesui dated October 21, 2007.

45. The January, 2008 appeal explained that the Plaintiff had been advised by numerous physicians not to sit for longer than one half hour at a time or stand for longer than one hour at a time during a normal 8 hour work day.

46. The January, 2008 appeal further explained that prolonged sitting exacerbated the Plaintiff's urinary/bladder problems as well as her vascular symptoms.

47. The January, 2008 appeal was denied by letter dated March 17, 2008.

48. In its appeal denial letter of March 17, 2008, Hartford did not dispute the fact that prolonged sitting caused Plaintiff to suffer bladder/urinary complications.

49. In its appeal denial letter of March 17, 2008, Hartford did not dispute the fact that prolonged sitting complicated Plaintiff's lower extremity vascular complications.

50. The March 17, 2008 denial contained multiple mistakes and was primarily based upon a "Peer Review Report" prepared by a Dr. Nemunaitis of MES Solutions dated February 26, 2008 which also contained multiple mistakes.

51. The March 17, 2008 appeal denial incorrectly stated that the Plaintiff was employed as a reporter.

52. The March 17, 2008 denial also indicated that Dr. Nemunaitis called Dr. Ma, which was also incorrect.

53. The March 17, 2008 denial erroneously indicated that the records supplied indicated that Dr. Ma's treatment did not begin until September 21, 2007, even though the records of Dr. Ma which had been supplied indicated that the Plaintiff had been under his medical care since December, 2005.

54. The report of Dr. Nemunaitis also erroneously referred to Dr. Natalia Deshevsky as a man.

55. The report of Dr. Nemunaitis of February 26, 2008 also erroneously indicated that Dr. Deshevsky was a neurologist when in fact, she was Plaintiff's primary treating physician.

56. The report of Dr. Nemunaitis also erroneously indicated that the Plaintiff, who was 44 years old, was 42 years old.

57. The February 26, 2008 report of Dr. Nemunaitis also erroneously stated that the Plaintiff's job could be performed if the Plaintiff were, "allowed to get up and walk around frequently," which it did not.

58. The February 26, 2008 report of Dr. Nemunaitis also misstated that "Dr. Cook felt that perhaps her job could be modified to meet her [Plaintiff's] needs" when in fact Dr. Cook never made any such recommendation, but merely stated that he encouraged the Plaintiff to discuss *possible* accommodations with her employer.

59. The February 26, 2008 report of Dr. Nemunaitis also erroneously stated that "there were no restrictions/limitations associated with the claimant's comorbid

conditions that included venus insufficiency and urinary retention," when, in fact, multiple treating physicians associated those complications with prolonged sitting.

60. Significantly, although Dr. Nemunaitis did reference telephone contact with Dr. Deshevsky, he failed to include in his report the fact that Dr. Deshevsky had informed him that the Plaintiff was suffering from the neurologic consequences of the previous spinal surgery which included intermittent autonomic nervous system dysfunction caused by a scarring of the cauda ecquina. In her telephone conversation with Dr. Nemunaitis, Dr. Deshevsky explained that Plaintiff's systems manifested themselves as arterial spasms effecting both legs from the thigh down, almost leading to ischemic gangrene and neurogenic bladder with resulting urinary retention leading to periodic pyelonephritis.

61. Dr. Deshevsky clearly informed Dr. Nemunaitis that both the arterial spasm and the neurogenic bladder were exacerbated by prolonged sitting.

62. Dr. Deshevsky explained to Dr. Nemunaitis that sitting for long periods of time leaves the Plaintiff vulnerable to bilateral leg amputation and urinary sepsis and that she was therefore deemed totally disabled from her occupation.

FIRST COUNT

ERISA

63. Hartford has wrongfully failed and refused to provide Plaintiff with the benefits she is entitled to receive pursuant to the subject long-term disability policy despite Plaintiff having duly made a claim and exhausted all necessary administrative remedies.

64. The failure of Hartford to provide Plaintiff with long-term disability benefits is a violation of ERISA.

65. As a direct and proximate result of the aforesaid denial of benefits, Plaintiff has sustained, and continues to sustain, economic loss and damage.

66. Pursuant to §502(a)(1)(b) of ERISA, 29 U.S.C. §1132(a)(1)(b), Hartford is obligated to provide Plaintiff with all past and future benefits that have been wrongfully denied.

67. Hartford's failures include, but are not limited to, the failure to pay benefits; and failure to consider Plaintiff's second level of appeal.

68. Pursuant to §502(g)(1) of ERISA, 29 U.S.C. §1133(g) Hartford is also liable to Plaintiff for reasonable attorney's fees incurred and costs of this action.

WHEREFORE, Plaintiff demands judgment against Defendants for reinstatement in the Long Term Disability Plan, retroactive and ongoing benefits, determining Plaintiff's right to future benefits and other attendant employee benefits together with attorney's fees, interest and costs of suit.

HAGNER & ZOHLMAN, LLC
Attorneys for Plaintiff

BY:________________________
Thomas J. Hagner

Dated: December 29, 2008